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UNCLAS SECTION 01 OF 02 PRETORIA 002670

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TAGS: [PREL](#) [PGOV](#) [PHUM](#) [SF](#)
SUBJECT: PRETORIA RESPONSE: RIGHTS VIS-A-VIS SEXUAL
ORIENTATION, GENDER IDENTITY

REF: STATE 130765

Summary

[1](#)1. Laws against homosexuals or transgendered persons are not a concern in contemporary South Africa, which may have the most progressive legal framework vis-a-vis gay rights anywhere in the world. Discrimination on grounds of sexual orientation is explicitly outlawed by the Constitution, and the state recognizes same-sex marriage. Although the lesbian, gay, bisexual, and transgender (LGBT) community enjoys official protections, it does suffer abuse and violence at the hands of more conservative or intolerant elements within society at large. Churches and tribal leaders advocate against gay rights, but they are unlikely to succeed in overturning existing legislation. End Summary.

Laws: "Gold Standard" on Gay Rights

[1](#)2. Protection of gay rights is enshrined in South Africa's Constitution, same-sex marriage is legal, and the official line staunchly protects the freedoms and dignity of LGBT persons. In reaction to the repressive history of apartheid (under which homosexuality was a crime punishable by imprisonment), the Constitution of 1994 is heavily rights focused, and the first in the world explicitly to include sexual orientation among the forms of discrimination outlawed by its Bill of Rights. The 1998 Employment Equity Act and 2000 Promotion of Equality and Prevention of Unfair Discrimination Act similarly include sexual orientation among the criteria barred in labor hiring and access to public services. In 2006, South Africa became the first African country to legalize same-sex marriage (with Parliament passing the measure by an overwhelming 230 to 41). Post is not aware of any reports of official mistreatment or bias against gays since 1994. Justice Edwin Cameron, who is openly gay and HIV positive, was appointed on January 1, 2009, to the Constitutional Court, the country's highest.

Attitudes: "Wrong"... But Not Everywhere

[1](#)3. Despite official protections, GLBT persons face varying levels of mistreatment depending on their location and religious / ethnic community. A 2008 survey found widespread public intolerance of homosexuality, which was commonly labeled "unAfrican," with 80 percent of respondents believing that sex between two same-gender persons was "wrong." Homosexuals are subject to societal abuses including hate crimes, gender violence targeting lesbians (so-called "corrective rape"), and even murder. (See post Human Rights Report for specific cases and prosecution status.) This

varies by locale, however, with rural areas typically conservative while major cities are more liberal, with some night club venues catering to gays. Johannesburg and Cape Town both host annual Gay Pride festivals, and smaller towns have similar events. Cape Town is seen worldwide as a "gay friendly" tourist destination, and tourism boards produce travel literature aimed to the gay market. Leading commercial TV network M-Net created a gay character for its popular TV soap opera "Egoli," helping to contribute to a slowly evolving tolerance.

Anti-Gay Voices (Tribal, Religious, Political)

14. Conservative segments of society -- mostly tribal and religious leaders, but also some minor political parties -- have vehemently resisted this legal and social liberalization. Traditional chiefs advocate for a rollback of gay rights, which they say is a corruption imported from the west. The 2006 deliberations over same-sex marriage legislation were accompanied by street protests organized by groups like the Marriage Alliance. Marginal conservative parties like the African Christian Democratic Party (ACDP) and United Christian Democratic Party (UCDP) proposed constitutional amendments to ban gay marriages. After the law's passage, the Catholic Bishops Conference conceded legal defeat but vowed to fight same-sex unions on moral grounds. None of these groups has gained much traction among lawmakers, however. In part this is because LGBT advocacy organizations are well organized and vocal. Perhaps as an outgrowth of the long-running battle for state and public

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understanding of HIV/AIDS, whose leaders included openly gay activists like Zackie Achmat of the Treatment Action Campaign (TAC), LGBT issues are "coming out of the closet," very gradually diminishing in stigma as public attitudes catch up to the more progressive vision set forth by South Africa's parliament and courts.

GIPS